

THE DIRECTOR OF CENTRAL INTELLIGENCE

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WASHINGTON, D. C. 20505

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Office of Legislative Counsel

9 AUG 1978

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OMB

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a proposed report to Chairman Staggers, House Committee on Interstate and Foreign Commerce, in response to a request for our recommendations on S. 2579, the "President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research Act of 1978."

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

Frederick P. Hitz
Legislative Counsel

Enclosure

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Washington, D.C. 20505

Honorable Harley O. Staggers, Chairman
Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your request for views on S. 2579, the "President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research Act of 1978," which passed the Senate on 26 June 1978 and was subsequently referred to your Committee.

This legislation would establish a Presidential Commission to guarantee that the rights of human subjects of biomedical and behavioral research are protected. Current CIA guidelines require that human subject research be conducted in strict accordance with Department of Health, Education and Welfare regulations and applicable statutes and that each entity conducting research hold an approved assurance from HEW. Thus, existing Agency policy is in accord with the aims and intent of this legislation.

Prior to its being reported to the Senate floor by the Senate Committee on Human Resources, the bill did contain several issues which were of concern to us. We expressed our concerns in a report to Chairman Harrison Williams, and these were addressed in the bill as passed by the Senate. Accordingly, we have no objection to the bill in its present form and as pending before your Committee.

Our main concern with the unreported version of the bill that was considered by the Senate Committee on Human Resources centered on the absence of provisions relating to the handling of sensitive information.

Specifically, proposed subsection 1801(e) stated that each prospective member of the Commission "shall receive all department and agency security clearances" necessary to assure access to information. As proposed, this subsection read as if receipt of clearances were a matter of right. This certainly was and is not the case, nor do I believe that such was the intent of the bill. We suggested substituting instead the phrase "must have qualified for all appropriate department and agency security clearances," to place this provision in the proper context. Subsection 1801(e) of the bill as passed by the Senate so provides.

While the provisions of the proposed subsection 1801(e) recognized the need for protecting national security information from unauthorized disclosure, other provisions in the bill did not take into account the fact that such information may fall into two categories: information which is classified pursuant to criteria established by Executive Order, and that which is designated pursuant to the statutory responsibility of the Director of Central Intelligence (50 U.S.C. 403(d)(3)) as information involving intelligence sources and methods. Subsection 1801(f) was amended accordingly; the bill before your Committee reflects our concerns in this regard.

Several provisions of the bill considered by the Senate Human Resources Committee, such as proposed sections 1802 through 1805, required that the Commission issue reports. In addition, proposed subsection 1806(d) provided the Commission with broad authority to make information public, and proposed subsection 1806(e) called for publication of certain information in the Federal Register. Proposed section 1807 limited these provisions by restraining the Commission from disclosing trade secrets and commercial or financial information and individually identifiable personal data. There was, however, no prohibition on disclosure of national security information to which the Commission may have had access. S. 1893, the bill's predecessor, included language prohibiting the Commission from disclosing classified information, and we argued that failure to include such a prohibition in the bill could have been construed as a tacit consent to disclosure. Further, we pointed out as noted above that even a restriction on disclosure of classified information would not protect all national security information. In order to make the extent of the Commission's authority perfectly clear, we suggested that the following new subsection be added to proposed section 1807:

"(c) The Commission shall not disclose any information collected or maintained by it pursuant to this title which is properly classified or is protected from unauthorized disclosure by statute."

Proposed subsection 1807(c) has been included in S. 2579 which your Committee is considering.

A further problem arose from the grant of authority to the Commission, contained in proposed section 1806(b)(1), (2) and (3), to hire various categories of personnel. We pointed out that once hired, such persons would undoubtedly have access to information in the possession of the Commission. The bill, as considered by the Senate Human Resources Committee, however, contained no provision that these persons would be required to obtain security clearances; nor were there any prohibitions on their releasing information. We urged the insertion of a provision stating that such persons would be subject to the same security requirements and restrictions as the members of the Commission. Accordingly, section 1806(a)(6) was added to the bill.

Further, we are of the opinion that, in accordance with subsection 1801(d), all agencies and departments engaged in biomedical research should designate an ex officio advisor to the Commission. This would ensure that each has a representative sensitive to its needs who could plead its case before the Commission. Moreover, those agencies and departments heavily involved in the type of research covered by the bill could certainly give advice and counsel to the Commission.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

Frank C. Carlucci